

FILED
COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON
BY
DEPUTY

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

IN RE THE PERSONAL REATRAINT OF)
) CASE NO. 41166-1-II
)
) PETITIONER'S REPLY TO
AARON JAY GREEN)
) RESPONDENT BRIEF
_____)

Now Comes, The petitioner, Aaron Jay Green Pro-se in reply to the State's response submitted January 11, 2011 and submits before the court the following:

I. REPLY STATEMENT/ARGUMENT

The State's claim that my PRP is frivolous and without merit is a classic move to "side step" the actual issue of fact that I received a hybrid sentence.

The issue of whether or not R.C.W. 9.94A.589 or State v. Smith, 142 Wn. App. 122, 173 P.3d (2007) supports my claim is really a moot point, no matter how you analyze it, A DOSA sentence along with a non-DOSA sentence that is longer, results in a hybrid sentence. In addition, there is the potential for the sentence to extend beyond the Statutory maximum, resulting in an exceptional sentence, in violation of Blakley v. Washington, 124 S.Ct 2531 (2004) Apprendi v. New Jersey, 120 S.Ct 2348 (2000). Furthermore, no where in the laws of the State of Washington does it allow for a sentencing court to sentence someone to a part concurrent, part consecutive sentence State v. Grayson, 130 Wn. App. 782, 784, 125 P.3d 169 (2005).

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II. FACTS

In my case I was sentenced to 60-months DOSA under one cause number, then 60-months non-DOSA under another, concurrent. The result is the first half of my DOSA sentence (30 months) runs concurrently with my 60-month non-DOSA sentence. At the end of the 30 months however, I will remain in confinement to finish the rest of my 60-month, non-DOSA sentence. After I complete the non-DOSA sentence, I will begin to serve the rest (community custody) portion of the DOSA sentence.

III. CONCLUSION

If the sentence in question is "hybrid" or consecutive then it is unlawful therefore, must be reversed, period. The sentencing court exceeded the authority of The Sentencing Reform Act (SRA) by imposing a de facto hybrid sentence, consisting of one sentence with a Drug Offender Sentencing Alternative (DOSA) and the other without. If the sentence is not hybrid, it is consecutive. A consecutive sentence for felonies which are not Serious Violent Offenses is an exceptional sentence, requiring factual findings by a jury, as sees in Blakley v. Washington, 542 U.S. 296, 124 S.Ct. 2531, 159 L.Ed. 20 403 (2004).

Therefore, this Court should grant petition and remand for resentencing in the interest of justice.

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RESPECTFULLY Submitted this 18th day of January, 2011.

///

Aaron J. Green

Aaron J. Green #785636 C-411-U
Monroe Correction Complex
Minimum Security Unit
P. O. BOX 7001
Monroe, Washington 98272-7001

State of Washington,
Respondent,

v.

Aaron Jay Green,
Petitioner.

CAUSE NUMBER 41166-1-II

DECLARATION OF MAILING

In Re the Personal Restraint

I, Aaron Jay Green, declare that on the 18th day of
January, 2011, I deposited the foregoing (name documents sent below)
Petitioner's Reply to Respondent Brief

or a true copy thereof, in the internal mail system of the MONROE CORRECTIONAL
COMPLEX - ^{MSU}~~WSRU~~ UNIT and made arrangements for postage, addressed to:

John C. Skinder - DPA
Thurston Co. Prosecutors Office
2000 Lakeridge Dr. SW Bldg. #2
Olympia, WA 98502-6090

Court Clerk - Court of Appeals
Division II
950 Broadway
Tacoma, WA 98402-4454

I declare under penalty of perjury under the laws of the State of Washington that the
foregoing is true and correct.

Dated this 18th day of January, 2011.

Aaron Green
Petitioner, pro se.

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